

JERRY HUGH CHRISTY,)
)
 Petitioner,) CASE NO. C11-0599-RSM
)
 v.)
) REPORT AND RECOMMENDATION
 MARION FEATHER,)
)
 Respondent.)
 _____)

Petitioner Jerry Christy is a federal prisoner who is currently incarcerated at the Federal Correctional Institution at Herlong, California. He has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging an institutional disciplinary hearing that was conducted at the Federal Detention Center at SeaTac, Washington (“FDC SeaTac”) in August 2010. Respondent has filed a response to the petition. After careful consideration of the petition, respondent’s response thereto, and the balance of the record, this Court concludes that petitioner’s petition for federal habeas relief should be denied.

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01 FACTS

02 Petitioner Jerry Christy entered Bureau of Prisons (“BOP”) custody at FDC SeaTac on
03 May 11, 2010. (*See* Dkt. No. 15, Ex. A at 22.) Between July 8, 2010 and July 9, 2010, twelve
04 inmates in petitioner’s housing unit, including petitioner, were suspected of using marijuana.
05 (*Id.*, Ex. A at 29.) All twelve inmates were subjected to urinalysis testing and nine inmates,
06 including petitioner, provided a positive initial sample. (*Id.*, Ex. A at 13 and 29.) On July 9,
07 2010, petitioner’s urine sample was sent to the National Toxicology Laboratories for
08 confirmation testing. (*See id.*, Ex. A at 6, 12 and 13.) On July 14, 2010, the BOP received
09 written notification from the National Toxicology Laboratories that petitioner’s urine specimen
10 tested positive for Cannabinoids: THC Metabolite. (*See id.*, Ex. A at 6 and 12.) On the same
11 date, an incident report was prepared by BOP staff indicating that a charge of Use of
12 Narcotics-THC had been leveled against petitioner and that an investigation would ensue.
13 (*Id.*, Ex. A at 6-7.) A copy of this report was provided to petitioner. (*Id.*, Ex. A at 7.)

14 On July 19, 2010, petitioner was provided notice that a disciplinary hearing would be
15 held on the Use of Narcotics charge and he was advised of the rights that would be afforded him
16 at the hearing. (*See id.*, Ex. A at 9-10.) The disciplinary hearing was held on August 7, 2010.
17 (*See id.*, Ex. A at 2-5.) At the hearing, petitioner denied that he had smoked any marijuana in
18 his living unit and suggested that the THC found in his system at the time of the urinalysis
19 testing may be attributable to marijuana he smoked at home prior to his incarceration given that
20 he had only been incarcerated for 60 days at the time he was tested. (*See id.*, Ex. A at 2.)
21 Petitioner provided documentation from a website which indicated that THC could be present
22 in a person’s body for up to 90 days after it was ingested. (*See id.*, Ex. A at 4.) Petitioner also

01 called one witness, a fellow inmate, who testified that “I never saw him smoke anything.” (Dkt.
02 No. 15, Ex. A at 2.)

03 After considering all of the evidence, which included the original incident report, the
04 investigation report, the laboratory reports, a BOP program statement which identifies
05 detection periods for selected drugs, including THC¹, and petitioner’s statement and evidence,
06 the DHO found petitioner guilty of using narcotics in violation of BOP policy. (*See id.*, Ex. A
07 at 2-4.) The DHO sanctioned petitioner to 60 days in disciplinary segregation, loss of 40 days
08 good conduct time, and loss of visiting privileges for a year. (*Id.*, Ex. A at 1 and 5.) The DHO
09 issued a written report on August 14, 2010 setting forth his findings. (*Id.*, Ex. A at 2-4.)

10 Petitioner thereafter filed a Regional Administrative Remedy Appeal. (*Id.*, Ex. A at
11 17.) The Regional Director denied that appeal on October 21, 2010. (*Id.*, Ex. A at 18.)
12 Petitioner next filed a Central Office Administrative Remedy Appeal. (*Id.*, Ex. A at 19-20.)
13 The National Inmate Appeals Administrator denied that final appeal on March 7, 2011. (*Id.*,
14 Ex. A at 21.) On April 8, 2011, petitioner submitted to this Court for filing the instant federal
15 habeas petition challenging his disciplinary proceedings. (*See* Dkt. No. 1.) Respondent filed
16 a return to the petition on June 14, 2011. (Dkt. No. 15.) This matter is now ripe for review.

17 DISCUSSION

18 Petitioner asserts in his federal habeas petition that his due process rights were violated
19 at the August 2010 disciplinary hearing at which he was found guilty of using THC because the
20 positive THC test was conducted after only 58 days of incarceration and his evidence

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22 ¹ Bureau of Prisons Policy Statement 6060.08 estimates that a person’s urine will test
positive for THC for a maximum of 30 days.

01 established that THC can stay in an individual's system for 60 to 90 days after the last use.
02 (See Dkt. No. 7 at 3.) Petitioner further argues that the BOP policy which provides that a
03 person's urine will test positive for THC for a maximum of 30 days after the last use is
04 unrealistic and unfair and resulted in the unconstitutional deprivation of 40 days of good
05 conduct time. (Dkt. No. 7 at 4-5.)

06 Where a prison disciplinary proceeding may result in the loss of earned good time
07 credits, a prisoner is entitled to certain due process protections. *Wolff v. McDonnell*, 418 U.S.
08 539 (1974). In *Wolff*, the Supreme Court held that the following minimum protections must be
09 afforded a prisoner: (1) advance written notice of the claimed violation; (2) the opportunity to
10 call witnesses and present documentary evidence "when permitting him to do so will not be
11 unduly hazardous to institutional safety or correctional goals"; and, (3) a written statement of
12 the factual findings supporting the disciplinary action. *Id.* at 563-66.

13 The Supreme Court has also held that, in order to comport with due process, a decision
14 in a prison disciplinary proceeding to revoke good time credits must be supported by "some
15 evidence." *Superintendent v. Hill*, 472 U.S. 445, 454 (1985). The Supreme Court explained
16 in *Hill* that "[a]scertaining whether this standard is satisfied does not require examination of the
17 entire record, independent assessment of the credibility of witnesses, or weighing of the
18 evidence. Instead, the relevant question is whether there is any evidence in the record that
19 could support the conclusion reached by the disciplinary board." *Id.* at 455-56. The Ninth
20 Circuit has held that the evidence relied upon to support the disciplinary action must possess
21 "some indicia of reliability." *Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987).

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01 The record before this Court demonstrates that petitioner was provided notice of the
02 alleged violation well in advance of the disciplinary hearing, he was provided an opportunity to
03 call witnesses and to present documentary evidence in his defense, and he was provided a
04 written statement of the factual findings supporting the disciplinary action. Thus, the due
05 process requirements established in *Wolff* were clearly met in petitioner's disciplinary
06 proceeding and, in fact, petitioner makes no claim to the contrary.

07 Petitioner's due process challenge actually goes to the result of the proceeding.
08 Petitioner appears to be of the belief that the documentary evidence he provided at the
09 disciplinary hearing which showed that THC can stay in an individual's system for 60 to 90
10 days after it was last used was sufficient to warrant a not guilty finding by the DHO since
11 petitioner had been incarcerated for slightly less than 60 days at the time the test revealing the
12 THC was done. However, as noted above, so long as there was "some evidence" to support the
13 decision of the DHO, and so long as that evidence was reliable, due process requirements are
14 satisfied.

15 The DHO's report of the disciplinary hearing reflects that the DHO reviewed
16 petitioner's documentary evidence but ultimately deferred to the BOP policy which states that a
17 person's urine will test positive for THC for a maximum of 30 days after the last use. The
18 evidence before the DHO included reports confirming that petitioner's urine specimen tested
19 positive for THC and that petitioner had not been prescribed any medication at FDC SeaTac
20 which could have caused the positive result. While petitioner contends that the BOP policy
21 was unrealistic and unfair, he offers nothing in this proceeding to satisfy the Court that the
22 evidence relied upon by the DHO was in any way unreliable. In this Court's view there was

01 sufficient evidence in the record to meet the *Hill* standard. Accordingly, petitioner's due
02 process claim is without merit.

03 CONCLUSION

04 For the reasons set forth above, this Court recommends that petitioner's § 2241 petition
05 be denied and that this action be dismissed with prejudice. A proposed order accompanies this
06 Report and Recommendation.

07 DATED this 17th day of August, 2011.

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10 Mary Alice Theiler
11 United States Magistrate Judge
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